

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BIOVAIL LABORATORIES INTERNATIONAL SRL	)	
a corporation of Barbados,	)	
	)	
Plaintiff,	)	C.A. Nos. 05-586 (GMS)
	)	05-730 (GMS)
v.	)	06-620 (GMS)
	)	(CONSOLIDATED)
ANDRX PHARMACEUTICALS, LLC and	)	
ANDRX CORPORATION,	)	
	)	
Defendants.	)	

**BIOVAIL’S MOTION FOR LEAVE TO FILE SUR-REPLY BRIEF IN OPPOSITION  
TO ANDRX’S MOTION FOR LEAVE TO FILE FIRST AMENDED  
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Plaintiff Biovail Laboratories International SRL (“Biovail”) moves to file a short sur-reply brief to correct three significant misstatements Andrx made in its reply brief and to address a new case on which Andrx relies.

Most importantly, Andrx incorrectly claims that Biovail had Andrx’s inequitable conduct allegations almost a month before it served its initial expert reports concerning the ‘866 patent and well before Biovail’s answering brief. These expert reports set forth at least nine new and distinct theories of inequitable conduct that were not included or remotely suggested in Andrx’s proposed amended answer. Therefore, these theories would not be part of the case even if Andrx’s motion for leave to amend were granted. Moreover, Biovail wishes to point out that these same expert reports belie Andrx’s assertion that the depositions Andrx took played a role in the timing of its inequitable conduct allegations. Finally, the fact that Andrx has now served its expert reports should not bar Biovail from conducting appropriate discovery on these allegations.

For the foregoing reasons, Biovail respectfully moves for leave to file the sur-reply brief attached as Exhibit A.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Karen Jacobs Loudon (#2881)*

---

Jack B. Blumenfeld (#1014)  
Karen Jacobs Loudon (#2881)  
klouden@mnat.com  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347  
(302) 658-9200  
Attorneys for Plaintiff Biovail  
Laboratories International SRL

OF COUNSEL:

Joseph M. O'Malley, Jr.  
Preston K. Ratliff, II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55th Street  
New York, New York 10022  
(212) 318-6000

April 16, 2007  
800685

**RULE 7.1.1 CERTIFICATE**

Counsel for Biovail hereby certifies pursuant to D. Del. L.R 7.1.1 that they discussed the subject of the foregoing motion with counsel for Andrx and Andrx has indicated that it opposes the motion.

/s/ Karen Jacobs Louden (#2881)

Karen Jacobs Louden

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on April 16, 2007, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Richard L. Horwitz  
POTTER ANDERSON & CORROON LLP

and that I caused copies to be served upon the following in the manner indicated:

**BY HAND AND E-MAIL**

Richard L. Horwitz  
POTTER ANDERSON & CORROON LLP  
1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
[rhorwitz@potteranderson.com](mailto:rhorwitz@potteranderson.com)

**BY EMAIL**

Steven A. Maddox  
FOLEY & LARDNER LLP  
3000 K Street, N.W.  
Suite 500  
Washington, DC 20007  
[smaddox@foley.com](mailto:smaddox@foley.com)

/s/ Karen Jacobs Loudon (#2881)  
klouden@mnat.com